

The HAV Compliance System: **Anti-corruption Program**

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1. Introduction and purpose

The requirements for compliance (compliance with laws and regulations), including in particular the requirement to prevent corruption, are in constant development, and in recent years, we have not just seen the adoption of new statutory provisions, but also that corresponding requirements are being made by customers and financial institutions. This means that customers – because of their own compliance regimes – require their suppliers to have a corresponding regime in order to minimize the risk that they themselves will be held liable. Moreover, the financial institutions apply the same requirements as a condition for providing financing, since they have a duty to prevent the implementation of illegal transactions.

The current status for companies of a certain size (including all listed companies) and international scope is that compliance does not just entail issuing a declaration to the effect that the rules will be complied with, companies must also implement *active measures* that are capable of ensuring compliance with the regulations. Several types of measures are common in this context, but their common denominator is that they should be *verifiable* (notoriety) and should be scaled to address the risk to which the company is assumed to be exposed. Consequently, this is not something that is done once and for all but must instead take the form of an ongoing and continuous process in the company, although with varying intensity. The provision in Section 3-3c of the Accounting Act can be used as an example. It requires large companies to report on their compliance work in their annual reports, and big customers can be expected to demand the right to carry out audits of their suppliers' compliance regimes.

The purpose of this anti-corruption program is to clarify and underline that zero tolerance of corruption shall be part of the corporate culture of the entire HAV Group and its partners, and to provide the company's management and employees with guidelines for assessing and handling corruption risk.

2. Anti-corruption and relevant regulations

As mentioned above, the key element in compliance work is the work on anti-corruption. For society as a whole, corruption undermines trust in the rule of law and democratic institutions, and it weakens ethical and moral values. In business and industry, corruption is an obstacle to rationalization and efficiency, and it undermines and distorts fair competition.

Typical signs of corruption are (i) the abuse of power conferred by one's position in an organisation, (ii) that the person abusing power offers or receives an improper advantage (bribes), and (iii) that the agreement between those involved are kept secret.

In Norway, the statutory provisions concerning corruption have been made more stringent in recent years, and the following provisions have a central place in this context:

- The General Civil Penal Code Sections 387-389, cf. Sections 27-28:

Corruption is defined in Section 387 of the General Civil Penal Code:

“A fine or imprisonment up to three years imposed on anyone who

- a) for himself or other persons requests or receives an **improper** advantage or offer thereof in connection with the exercise of a position, office, or assignment, or*
- b) gives or offers any person an **improper** advantage in connection with the exercise of a position, office or assignment.*

Position, office or assignment in the first paragraph also means a position, office or assignment abroad”

The core of the statutory prohibition is thus that it must involve an “*improper*” advantage. The “improper” requirement is a legal standard without a defined content, and it can change over time. What is important in a concrete overall assessment will therefore depend on:

- the intention behind the offer of such advantage (i.e. the influence element),
- the nature and financial value of the advantage,
- the relationship between the parties, and
- whether there is transparency about the advantage, for example whether the giver and recipient's superiors are aware of the advantage offered or received.

Improper advantages include financial advantages such as payments in cash or into an account, cars, free travel, hospitality or shares in a company. Non-financial advantages of no direct material value are also included, for example a promise of a future holiday trip, membership of an exclusive association or a place at a private school for children.

Both the person offering the improper advantage (active corruption) and the person accepting such an offer (passive corruption) may be subject to criminal prosecution for corruption pursuant to the General Civil Penal Code. Aiding and abetting corruption is also punishable.

The prosecuting authorities are not required to present evidence that an improper advantage has been given. It is sufficient that an improper advantage has been offered, demanded, or accepted in connection with a position, office, or assignment. Nor is it a requirement that a person who has received a bribe has done what he or she was paid to do or was encouraged to do.

Giving or demanding facilitation payments, i.e. payment for a service one is already entitled to or has a statutory right to without extra payment, is a form of corruption covered by the General Civil Penal Code. If the facilitation payment constitutes or is intended to create an improper advantage, this can result in criminal liability. However, in the preparatory works to the General Civil Penal Code, it is stated that facilitation payments in connection with services to which a person is entitled do not always constitute an improper advantage. As an example, it is mentioned that if someone feels compelled to pay a small amount to a foreign public servant in order to get his or her passport back, or to be allowed to leave the country, this will not be punishable.

Section 389 of the General Civil Penal Code, which concerning trading in influence (influence peddling) can also be mentioned here. In brief, the provision concerns cases where a person gives or offers an *intermediary* an improper advantage as a reward for influencing a decision-maker, without the decision-maker him or herself obtaining any advantage. A key factor when assessing whether a crime has been committed is how open the intermediary has been about his or her activities, relations, and intentions.

The penal sanctions for corruption range from fines to imprisonment for a term of up to 10 years, depending on whether the provision relating to "corruption" (the General Civil Penal Code Section 387), "gross corruption" (the General Civil penal Code Section 388) or "trading in influence" (the general Civil penal Code Section 389) is applied.

The General Civil Penal Code also includes criminal liability for legal entities, including companies. According to Section 28 letter c will a court decision and a measure of penalty among other things depend on whether the company "*by guidelines, instruction, training, control or other measures could have prevented the offence*".

- The Working Environment Act Section 2 A:

An employee is entitled to raise the alert or notify about censurable circumstances in an enterprise, including corruption, and all employers are obliged to facilitate such notification.

- The Section 1-6 of the Compensatory Damages Act:

For an employer to avoid being held liable in damages for corruption committed by an employee, the employer is required to have "*taken all reasonable precautions to prevent this*".

- Report to the Stortinget No.10 (2008–2009) Corporate Social Responsibility in a Global Economy:

Among other things, the report sets out the State's expectations that the business community will implement active anti-corruption measures through the establishment of notification procedures and information work, and that it shall be as transparent as possible about cash flows.

- Section 3-3c of the Accounting Act:

As mentioned above, it is a requirement that large enterprises report on their compliance work in their annual reports.

In the international context, it can be mentioned that countries such as the USA and the UK have adopted stringent laws relating to anti-corruption work (the Foreign Corrupt Practices Act and the UK Bribery Act). Common to them both is that liability can be avoided/reduced if active anti-corruption measures have been implemented.

In addition to the above-mentioned corruption legislation, there are other areas where compliance shall be in focus in HAV Group. They concern financial reporting, other regulations relating to corporate social responsibility (labour rights, human rights and the environment), competition rules, insider regulations, personal data protection, national sanction provisions etc.

3. Risk associated with non-compliance

The uncovering of or suspicion of corruption can completely undermine the company's *reputation* in a short space of time. If the company is subject to criminal prosecution and is convicted, strict penal sanctions will be imposed, the company's stock exchange value could fall and, in the worst case, the company could carry the stigma forever. Non-compliance also has a commercial aspect in addition to the reputation risk in that a company will risk losing contracts if it does not meet the *customer's requirements* as regards compliance.

The risk facing HAV Group in relation to compliance is primarily the risk of *official sanctions*. The fines for non-compliance are becoming higher and higher, and this applies if the matter falls under US and/or UK jurisdiction (the Foreign Corrupt Practices Act and the UK Bribery Act). Moreover, the gross proceeds from an act of corruption can also be confiscated. This means that, if a HAV company has won a contract through bribery, the whole turnover can, by law, be confiscated without any deduction for expenses. Furthermore, individuals could also be held liable.

Companies that are prosecuted for corruption can be refused loans by national and international financial institutions (*financing risk*), and loan agreements under export credit and export financing schemes can be terminated if corruption has taken place.

Responsible *investors* will choose not to invest in shares in, and will perhaps withdraw from, companies that are involved in corruption. Some responsible investors also assess corruption risk and whether companies' anti-corruption measures are adequate and use this as the basis for choosing new investments.

Finally, compliance is also part of the board of directors' *management and supervisory responsibility* (cf. the Limited Liability and Public Limited Liability Companies Acts Section 6-12 and 6-13), and board members could therefore also be held liable for the company's non-compliance. However, the regulations are so formulated that, if it can be documented that genuine endeavors have been made to prevent violations, the company and its representatives could avoid being held liable.

4. Definition of risk areas

HAV Group ASA delivers products and services worldwide within ship design and equipment.

In this light, the following areas are defined as particular risk areas in relation to corruption:

(i) Use of intermediaries / agents

Since HAV Group wishes to sell its products worldwide, it is occasionally expedient / necessary to use intermediaries or agents to open doors to new markets and establish relations with new customers.

Such intermediaries / agents are normally only paid if their endeavors are successful (signature of a contract), and they therefore have a strong closing incentive. The HAV company in question will usually have limited knowledge of and control over the intermediary's operations (compared, for example, with its own employees), and it can therefore be expected that corruption may occur in connection with such contracts.

The HAV companies' risk being held liable for the actions of intermediaries / agents acting on their behalf. Such liability includes criminal prosecution in Norway for corruption that has taken place in other countries. In addition, companies that operate abroad risk criminal prosecution pursuant to legislation in other countries.

Intermediaries/agents that operate on their own are deemed to entail a greater risk than intermediaries/agents that are employed by recognized brokerage companies.

(ii) Customers / suppliers in 'high-risk countries'

Some countries/parts of the world are deemed to entail a greater risk of corruption than others. Since the HAV companies are active internationally, a concrete assessment must be carried out in each individual case of whether more detailed investigations / measures are necessary.

(iii) Persons with decision-making powers

Persons with decision-making powers in relation to third parties may be exposed to corruption risk. Within the HAV Group, this applies to:

- the management,
- procurement personnel,
- sales personnel,
- the board of directors as the supreme management and supervisory body.

5. Active and preventive measures

Generally recommended measures relating to a company's compliance work are listed below. It is not the case, however, that all such measures must be in place; it is the nature and degree of risk that determines what a company should do.

- Regular risk analyses
- Adoption of internal rules/procedures
- Raising awareness of and training employees and other representatives of the company
- Regular checks, for example reviews of contracts/ cash flows etc.
- Third-party due diligence (agents etc.)
- Follow-up of "red flags"
- Establishment of a notification channel
- Establishment of contact points for handling dilemmas
- Investigation of suspicious incidents
- Incorporation of compliance clauses in contracts
- Addressing compliance risks in connection with mergers and acquisitions (M&A), as there is a risk of taking over criminal liability for previous acts of corruption
- Dealings with the authorities

Combating corruption is a board and management responsibility that must be carried out systematically and with a long-term perspective. The following measures are currently implemented in HAV Group:

(i) Definition of risk areas

HAV Group has defined areas in which there is a particular risk of corruption.

(ii) Contact point and notification channel

HAV Group has appointed the Head of Legal Affairs as contact point, who has contact with an external compliance adviser.

The board of directors and corporate management team have a clear expectation that employees will raise the alert about censurable matters, based on the non-statutory loyalty obligation that exists in employment relationships. In that connection, HAV Group has made arrangements to facilitate internal notification should circumstances be found to exist that are subject to penal sanctions (including corruption), or that are in violation of statutory obligations or prohibitions, or are in breach of the company's Code of Conduct or generally accepted ethical standards.

It is facilitated for anonymous "whistleblowing" on the company's website:

<https://www.havgroup.no/about/corporate-responsibility/>

The notifier is expected to consider what is the most proper and expedient procedure for raising the alert in each case, for example via email or in an anonymous letter. Persons who report a matter in good faith shall not be subject to reprisals or sanctions.

(iii) Written guidelines and procedures

HAV Group has adopted a Code of Conduct for the group and its companies.

HAV Group has introduced an Anti-corruption Program as described in this document.

(iv) Information and communication

All employees, partners and other stakeholders shall be informed about HAV Group's Code of Conduct and Anti-corruption Program. This shall be communicated as follows:

- The Code of Conduct and Anti-corruption Program shall be included as a contractual document in all employment contracts, and newly appointed employees must confirm by their signature that they have read and accept the group's guidelines.
- All anti-corruption clauses shall refer to the Code of Conduct and expectation of compliance.
- The Code of Conduct and Anti-corruption Program are available on HAV Group's website: <https://www.havgroup.no/about/corporate-responsibility/> , and on the group's internal portal: <https://havgroup.sharepoint.com/>

When the Code of Conduct was adopted by the board of directors of HAV Group ASA, an internal message was sent to all employees in HAV Group requesting them to familiarize themselves with the guidelines and informing them that any employee who failed to do so could be subject to disciplinary measures. After this Anti-corruption Program was adopted, the present document was distributed and communicated to all employees of HAV Group.

All changes to the Code of Conduct and Anti-corruption Program shall be communicated in internal messages in HAV Group.

(v) Requirement for anti-corruption programs in the supply chain

Contracts with intermediaries / agents and suppliers must include adequate anti-corruption provisions. Furthermore, these provisions must ensure that the contract can be terminated should corruption be found to exist in the counterparty's organisation, and they must include

an obligation to cover any financial loss suffered by the relevant Havyard company in connection with termination of the contract. The relevant company board shall be informed about the use of agents/intermediaries in connection with the approval of contracts.

With respect to contracts with agents / intermediaries, it is important to be aware of the following:

- A written agreement must be signed in advance.
- There must be proportionality between the remuneration and services rendered. The General Civil Penal Code also applies to bribes paid indirectly through agents or other intermediaries, and a commission can constitute an improper advantage if, for example, it is disproportionate to the services rendered or if no services are actually rendered.
- Do not give an agent/intermediary an “open remit” to secure a contract, but give clear instructions about what tasks are to be performed. The following is an example of an unfortunate description that could encourage corruption:

“The Agent shall take care of any operation required or deemed desirable in order to assist the shipyard in obtaining the contract.”

- Allowing an agent/intermediary to use “nominees” can entail a corruption risk and should be avoided.
- Always check that any commission is paid directly to the agent/intermediary.

(vi) Internal training – awareness-raising and training

An annual event shall be held on the topic of anti-corruption work with the help of external expertise, and with the participation of those who, due to their position, may be subject to particularly strong pressure to give or receive bribes (the management, board, procurement personnel and sales personnel).

All participants must confirm by their signature that they have attended the event.

(vii) Risk analyses – Integrity Due Diligence (background checks)

The risk of corruption shall be examined and assessed in relation to new markets, customers and partners.

Tools for identifying and avoiding corruption in contracts, and guidelines for incorporating anti-corruption in the company's policy and practice, are available on the websites <https://www.oecd.org/corruption-integrity/explore/topics/business-integrity.html> and <https://www.ganintegrity.com/portal/>, among other places.

A frequently used indicator to measure the degree of corruption in a country's public sector is the Transparency International Corruption Perceptions Index (CPI), which has been drawn up by Transparency International and is available at www.transparency.org/research/cpi/overview. The index ranks countries on a scale from 0 (high degree of corruption) to 100 (no corruption). Countries with a score of 40 or lower are deemed to have a significant risk of corruption.

Transparency International Norge has also prepared a supplementary handbook “*Beskytt din virksomhet – Håndbok i antikorrupsjon for norsk næringsliv*” (“Protect your company – handbook in anti-corruption for Norwegian business and industry”), which can be downloaded from www.transparency.no.

(viii) Evaluation and adaptation

The board of directors of HAV Group ASA shall carry out an annual evaluation of the Anti-corruption Program.

The purpose of the evaluation shall be to evaluate its expediency (content and structure) and actual compliance (effectiveness).